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AICPA Washington Report

October 3, 1983, Volume XII, Issue 32

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COMPTROLLER OF THE CURRENCY

Actions designed to implement recommendations made by the Federal Financial Institutions Examination Council regarding disclosure of insider loans to the public and to implement changes to the insider loan law made by the Garn-St Germain Depository Institutions Act of 1982 were recently taken by the OCC (see the 9/27/83 Fed. Reg., pp. 44085-7 and 44062-3). The OCC proposal on disclosure of insider loans would require a national bank to disclose, upon request, the names of bank insiders who have borrowed substantially from the bank or from correspondents of the bank. A loan would be considered substantial under the proposal if it were more than 5 percent of the bank's capital and unimpaired surplus, or $500,000, whichever is less. The proposal would also require national banks to keep a record of each disclosure request for a period of two years. Comments on the OCC disclosure proposal are requested by 10/27/83. For additional information contact Raija Bettauer at 202/447-1880. Additionally, the Comptroller adopted a final rule governing loans to insiders. The rule, which was proposed 5/23, raises the aggregate permissible dollar limit on loans by a bank to its management officials. Under the rule, national banks may extend credit to executive officers if the amount does not exceed at any time the higher of $25,000 or 2.5 percent of the banks capital and unimpaired surplus. The OCC set an absolute limit of $100,000 on such loans. The limit does not apply to residential mortgage or educational loans to insiders. One rule also sets a limit on loans to other insiders, and provides that any loans in excess of the limits must be approved ahead of time by a majority of the bank's board of directors. The absolute aggregate limit on these loans in $500,000 and the trigger is $25,000 or 5 percent of bank capital, whichever is larger. The rule is effective 10/27/83. For additional information contact Peggy Shriver at 202/447-1165.

OFFICE OF MANAGEMENT AND BUDGET

A new policy requiring federal agencies to report delinquent debts owed to the government to credit bureaus and to use credit reports to check applicants for loans, contracts and grants was recently announced by OMB (see release OMB83-29). In the same release, OMB announced that as a result of other administrative measures already taken, the growth rate in delinquencies that had reached 41 percent between 1981 and 1982 had been virtually stopeed. Of the $289 billion owed the government, about $44.3 billion is overdue. After 11/30/83, agencies must check all credit or contract applicants through the credit bureau system before making a decision to extend credit. Federal agencies have been instructed to notify delinquent debtors that after 11/30/83, non-payment of government debts could adversely affect credit ratings. For additional information contact OMB at 202/295-7381.

SECURITIES AND EXCHANGE COMMISSION

Final amendments to Regulation S-K, dealing with major revisions of management remuneration disclosure and the conditional adoption of coordinating amendments to Form S-18 were recently published by the SEC (see the 9/29/83 Fed. Reg., pp. 44467-77). As regards disclosure for executive compensation, the new rules changed requirements about which officer's salaries should be disclosed individually, raised the reporting threshold for an individual to $60,000 from $50,000, and for non-cash perquisites, set a threshold of $25,000 or 10 percent of an executive officer's compensation. For additional information, contact Elliot Pinta regarding Regulation S-K amendments at 202/272-2589, and for Form S-18, contact Steven Holtzman at 202/272-2644.

"The full disclosure philosophy of the federal securities laws depends on the credibility and professionalism of accountants who audit the financial statements of publicly-held companies," according to a recent address by SEC General Counsel Daniel L. Goelzer at the University of Wisconsin on 9/22/83. While warning that recent "dramatic bank collapses, such as Penn Square, may now be reviving Congressional interest in auditing," Mr. Goelzer listed some steps the SEC has taken to encourage self-regulation during the past six years: recission of Accounting Series Release No. 250, dealing with disclosure of non-audit services by independent accountants for their audit clients; revisions to the independence requirements for accountants which brought the SEC's rules closer to the AICPA's interpretation of Rule 101 of the Code of Professional Ethics; the achievement of a compromise with the AICPA's SEC Practice Section concerning access to the raw materials underlying the Section's peer reviews; and, SEC support for amendments to the Foreign Corrupt Practices Act of 1977, including a recommendation that would clarify that record accuracy is not an absolute, abstract requirement.

TREASURY, DEPARTMENT OF

The state's use of the worldwide unitary method of taxation will be examined by a Working Group chaired by the Secretary of the Treasury and will not be the subject of a motion for a rehearing by the U.S. Supreme Court, according to a 9/23/83 release by the U.S. Department of Treasury. Citing the decision by President Reagan not to address this issue in the courts, Secretary Regan cited a number of issues to be considered by the Working Group, including: a consistant and appropriate definition of unitary business; an equitable resolution to the problems raised by foreign governments and foreign-based multinationals; and, uniform reporting requirements and joint state audits. According to some estimates, approximately a dozen states use the "worldwide method of accounting" and raise something in excess of $700 million a year.

Final regulations clarifying how to compute the foreign tax credit limitation on capital gains under changes made in the 1976 and 1978 tax laws have recently been issued by the IRS (see the 9/29/83 Fed. Reg., pp. 44519-25). The proposals, which implement changes made by the 1976 Tax Reform Act and the 1978 Revenue Act provide formulas for computing capital gains for foreign tax credit purposes when some gains are U.S. source and other gains are foreign source. Prior to the changes made by Congress, no rules existed for netting capital gains and losses in these cases. The IRS explained that distortions were created when a taxpayer had capital losses allocable or apportionable to U.S. sources which reduced foreign source capital gains. Such distortions occur when the amount of a foreign tax credit increases without a corresponding rise in U.S. tax liability. The regulations also deal with non-corporate taxpayers in a similar manner, including special source rules for the sale of personal property. The regulations are generally effective for taxable years beginning after 12/31/75. For additional information contact Jacob Feldman at 202/566-3289.

Regulations relating to the estate tax exclusion for lump sum distributions from qualified pension, profit sharing, and stock bonus plans were recently proposed by the IRS (see the 9/27/83 Fed. Reg., pp. 44087-9). Under the Revenue Act of 1978, the estate tax exclusion for lump sum distributions under sec. 2039 of the Code is available only if the recipient of the distribution irrevocably elects to forgo the favorable income tax treatment afforded lump sum distributions. The existing regulation provides that the recipient of a lump sum distribution makes the election by treating the amount received as ordinary income or by making a rollover contribution under Code sec. 407(a)(7). It also provides that when the estate tax return is filed before the recipient's income tax return is filed, the estate tax return may reflect the exclusion of the distribution from income, even though the recipient has not yet made the required election. If the recipient does not subsequently make the required election, however, the distribution is not excludable. According to the IRS, the proposal is designed to remove the administrative difficulties caused by the existing regulation because it requires the estate to file an amended return. The proposal would delete the existing election rule and provide that the estate tax return may not reflect the election until it is actually made. It would also allow a recipient to make an election prior to the filing of an income tax return by filing an election statement. Once the election statement is filed, the election would be irrevocable. Comments are requested by 11/28/83. For additional information contact Patricia Keesler at 202/566-3430.

SPECIAL: SUBCOMMITTEE CLEARS FRINGE BENEFITS BILL FOR ACTION BY FULL WAYS AND MEANS COMMITTEE

Legislation aimed at establishing permanent rules for the taxation of fringe benefits, H.R. 3525, was sent by a House Subcommittee to the full Ways and Means Committee for approval on 9/29/83. The Select Revenue Measures Subcommittee left unchanged the non-discrimination safeguards, but liberalized restrictions on reciprocal fringe benefit arrangements and the treatment of employee discounts. Committee staffers emphasized that the fringe benefit bill sent to the full committee attempts to leave untaxed an non-statutory fringe benefits that were brought to the attention of the panel. The measure would replace a moratorium which expires at the end of 1983 on the Treasury's issuance of regulations clarifying when non-statutory fringe benefits are taxable. According to sources on the Joint Committee on Taxation, in codifying the tax treatment of most existing fringe benefits, H.R. 3525 would have "only a negligible revenue impact, if any." The full Ways and Means Committee has not yet scheduled the bill for mark-up.

For additional information, please contact Jim Kovakas, Gina Rosasco, Nick Nichols or Kathee Baker at 202/872-8190.

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American Institute of Certified Public Accountants
1620 Eye Street, N.W., Washington, D.C. 20006

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